

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	05-CV-0329 GKF-PJC
	*	
TYSON FOODS, INC., et al.,	*	
	*	
Defendants.	*	

VIDEO DEPOSITION OF MIKE NANCE

ANSWERS AND DEPOSITION OF MIKE NANCE, produced as a witness at the instance of the Defendants Cargill, Inc. and Cargill Turkey Production, LLC, taken in the above-styled and -numbered cause on the 9th day of April, 2009, A.D., beginning at 8:37 a.m., before Lisa Smith, a Certified Shorthand Reporter in and for the State of Texas, in the offices of Rhodes, Hieronymus, Jones, Tucker & Gable, PLLC, located at 100 West Fifth Street, Suite 400, Tulsa, Oklahoma, in accordance with the Federal Rules of Civil Procedure and the agreement hereinafter set forth.

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A P P E A R A N C E S

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Mike Nance

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ALSO PRESENT:

ANN DAVIS - Videographer

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P R O C E E D I N G S

(Exhibit No. 1 was marked.)

THE VIDEOGRAPHER: This is Tape No. 1 to the videotaped deposition of Mike Nance in the matter of State of Oklahoma versus Tyson Foods being heard before the U.S. District Court for the Northern District of Oklahoma, Case No. 05-CV-0329 GKF-PJC. This deposition is being held at 100 West Fifth, Suite 400, Tulsa, Oklahoma on 4/9/2009 at 8:37 a.m.

And I am the videographer. My name is Ann Davis. The court reporter is Lisa Smith.

Counsel will please introduce yourselves and affiliations and the witness will be sworn.

MR. WALKER: Todd Walker with Faegre & Benson representing the Cargill defendants.

MR. MIRKES: Craig Mirkes with McDaniel, Hixon, Longweil & Acord representing Peterson Farms.

MR. FREEMAN: Bruce Freeman, Conner & Winters, Simmons.

MR. CHADICK: Buddy Chadick, Bassett Law Firm, George's.

MR. WILKERSON: Brian Wilkerson, Riggs, Abney, Neal, Turpen, Orbison & Lewis in Tulsa, representing The State of Oklahoma, plaintiffs.

MIKE NANCE,

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1 having been first duly sworn, testified as follows:

2 EXAMINATION

3 BY MR. WALKER:

4 Q. Mr. Nance, I'm Todd Walker. We've met just a
5 moment ago.

6 A. Yes.

7 Q. But the first thing I'd like to ask you, do you
8 prefer Officer Nance, Mr. Nance? How can I best address
9 you?

10 A. Mike.

11 Q. I'd rather be a little more formal.

12 A. Okay.

13 Q. Is Mr. Nance okay?

14 A. Yes, that's great.

15 Q. Okay. Would you please state your full name for
16 the record.

17 A. Michael L Nance, N-A-N-C-E.

18 Q. Mr. Nance, have you ever been deposed before?

19 A. Yes.

20 Q. Okay. So you understand that you're under oath
21 today; correct?

22 A. Yes.

23 Q. And you need to deliver truthful answers and
24 answers that are just as truthful as you would before a
25 Court. I know we're in an informal conference room sitting

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1 but it's just the same as if you're in court. Okay?

2 A. Yes, sir.

3 Q. Thank you. How many times have you been deposed
4 in the past?

5 A. Two or three times, not that many.

6 Q. And the most recent time?

7 A. A couple weeks ago.

8 Q. Well, then this is probably going to be a familiar
9 exercise. Let me just run through a couple of things I
10 like to advise a witness of before we get going about the
11 process. I'll be asking a series of questions that you'll
12 need to give answers to. And we have a court reporter here
13 today who's taking down all the things that everybody in
14 the room says.

15 A. Uh-huh.

16 Q. It's important so that we get a good written
17 record in particular, even though we're on video, that we
18 do the best we can not to talk at the same time which is
19 difficult but we'll -- if you can wait until I finish
20 asking a question before you begin to deliver your answer
21 and I will try and do the same in waiting for your answer
22 to finish before I move on to the next question. That'll
23 help the record quite a bit. Okay?

24 A. Okay.

25 Q. The other thing that I want to be sure -- is to be

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1 sure that if you give an answer that you understand the
2 question. And -- so if there's anything about a question
3 that I ask, and I might ask a question that doesn't make
4 much sense, I can admit that, please let me know and I will
5 try and rephrase the question in a way that makes sense to
6 you. Okay?

7 A. All right.

8 Q. If at any time you need to take a break, glad to
9 do so. The only thing that I want to be sure of is if
10 there's a question pending, that you deliver your answer
11 before we go on a break. Okay?

12 A. Okay.

13 Q. The court reporter has marked a subpoena as
14 Exhibit 1. I just want to ask you if you're familiar with
15 that document.

16 A. Yes.

17 Q. Okay. And can you tell me what it is?

18 A. Exhibit 1 is -- is a subpoena to testify in
19 deposition in the United States District Court, Civil
20 Action 05-CV-00329 GKF-SHA, State of Oklahoma versus Tyson
21 Foods, Incorporated, et al.

22 Q. This case; correct?

23 A. Yes.

24 Q. Okay. And did -- were you served with a subpoena?

25 A. Yes, sir, I was.

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1 Q. And that's why you're here today; correct?

2 A. Yes.

3 Q. Did you notice on the subpoena that it required
4 you to bring any documents, electronically stored
5 information, that you may have in relation to this case and
6 your work in this case?

7 A. Yes.

8 Q. Did you bring any documents with you today?

9 A. Yes.

10 Q. Okay. Do you have those handy?

11 A. Yes.

12 Q. Can you hand them to me so I can see what you
13 brought?

14 A. Yes. Here's my copy of the subpoena and these are
15 records from having -- having worked for three years in
16 this.

17 Q. And what you've just handed me are the 1099 forms
18 that you received from Lithochimiea which represent the
19 payments that you received for your work in this case?

20 A. Yes, sir.

21 Q. Okay. Did you bring any other documents with you
22 today?

23 A. No, sir.

24 Q. Did you have any other documents relating to this
25 case?

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1 A. No, sir.

2 Q. Did you diligently search for whatever you might
3 have?

4 A. Yes, sir.

5 Q. Did you keep any computerized records during the
6 course of your work in this case?

7 A. No, sir.

8 Q. Did you send any e-mails during the course of your
9 work in this case?

10 A. No, sir.

11 Q. Can I have this copy?

12 A. Yes, sir.

13 MR. WALKER: We'll go ahead and mark this as
14 Exhibit 4.

15 (Exhibit No. 4 was marked.)

16 Q. I just want to ask you a couple questions about
17 the exhibit. That represents all the payments that you've
18 received in the course of your work?

19 A. I believe so.

20 Q. And -- so you were paid for your work in the years
21 2005, 2006 and 2007; correct?

22 A. Yes, sir.

23 Q. So you didn't do any work in 2008 in this case?

24 A. I don't think so. I think this is -- I think this
25 is my work here.

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1 Q. And I noticed and just took a couple quick notes
2 as to the amounts of compensation you received that are
3 shown in the 1099s on Exhibit 4 from Lithochimiea. In
4 2005, you received \$1820; is that correct?

5 A. Yes.

6 Q. And in 2006, you received \$1722?

7 A. Yes.

8 Q. And in 2007, you received \$8330; right?

9 A. And 71 cents.

10 Q. And 71 cents.

11 At about what rate were you compensated over
12 the course of your work in 2005, '6 and '7?

13 A. I think -- if I remember correctly, I think it was
14 \$30 an hour.

15 Q. You're probably better at math than I am. There's
16 a really good chance of it, anyway. But I calculated,
17 then, that in 2005 earning 1800 or so dollars at \$30 an
18 hour, you might have worked about 60 hours?

19 A. I haven't done the math, but I will.

20 Q. Does that sound about right, that you might have
21 worked about 60 hours?

22 A. That sounds about right.

23 Q. And other investigators who have testified before
24 you testified that they worked about-12 hour days or more
25 seemed to be the norm. Is that your recollection as well?

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1 A. That's correct.

2 Q. So if you worked about 60 hours, that might be
3 five days or four days if they were really long days. Does
4 that sound about right?

5 A. Yes, sir.

6 Q. So if -- your recollection, is it consistent with
7 having worked four or five days in 2005?

8 A. Yes, sir.

9 Q. And in 2006, having earned \$1722, that also would
10 represent about four or five days of work in 2006?

11 A. Yes, sir.

12 Q. And in 2007, you earned \$8300 and I -- I roughly
13 calculate that to be somewhere north of 20 days, probably
14 less than 30 days. Does that sound about right?

15 A. Yes, sir.

16 Q. What did you do to prepare for your deposition
17 today?

18 A. Really nothing. I had nothing to prepare with,
19 other than just my recollection of -- of what -- what I did
20 during that period of time.

21 Q. Okay. Did you meet with anybody?

22 A. I had about a 30-minute meeting at Riggs Abney,
23 basically a very short meeting with them about a week ago.

24 Q. Who was at that meeting?

25 A. Steve Steele. I can't recall the name of the

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1 attorney representing Riggs Abney.

2 Q. Mr. Garren, does that sound familiar?

3 A. Yes. Yes, Rick Garren.

4 Q. Rick Garren?

5 A. Yes, he was there. I think Liz Weatherly was
6 there. Tim Bracken was there. And Mike Huff was there.
7 And I believe that was all that was present at that
8 meeting.

9 Q. Who was -- who was doing the talking at that
10 meeting?

11 A. Well, of course, we all talked, but primarily
12 Mr. Garren.

13 Q. Did Mr. Garren lead the meeting?

14 A. Yes, sir.

15 Q. What did Mr. Garren say to you in that meeting or
16 to the group?

17 A. I can't recall specifically, to be perfectly
18 honest.

19 Q. Do you recall generally what he was talking about?
20 It was just a week ago, I understand.

21 A. And it was just generally that this deposition
22 would -- would occur and to tell -- obviously tell the
23 truth and -- and to obviously to provide 1099 forms for
24 your -- your records and generally that was about it.

25 Q. Did he talk with you about what he thought any of

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1 the witnesses should testify to as far as their knowledge
2 or lack of knowledge of the law?

3 A. No. Just -- just to testify truthfully and
4 honestly about what -- what our participation had been.

5 Q. So he didn't say anything in that meeting about
6 the fact that you-all have limited or no knowledge of
7 environmental law and should testify to that fact?

8 A. I can't recall specific references to that, but I
9 have no knowledge of environmental law.

10 Q. If other witnesses who were in that meeting
11 testified essentially that way, that that's what Mr. Garren
12 was telling them, would you have any reason to disagree?

13 A. No.

14 Q. Was the State's Riggs Abney counsel who's sitting
15 at the table next to you at that meeting?

16 A. No.

17 Q. Any other person that you could identify as a
18 lawyer in that meeting?

19 A. No.

20 Q. Was Mr. Louis Bullock in that meeting, if you
21 know?

22 A. No.

23 Q. After that meeting, did you meet with anybody or
24 talk with anybody at all about this case?

25 A. No.

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1 Q. Did you meet with anybody or talk with any of the
2 investigators who have been deposed this week about their
3 depositions?

4 A. No.

5 Q. Have you talked with Mr. Steve Steele in the last
6 48 hours?

7 A. No.

8 Q. And I'll ask the same question whether you've
9 talked with any of the following individuals in the last 48
10 hours.

11 A. No.

12 Q. Mr. -- well, I have to give you the people. Okay?

13 A. Okay.

14 Q. Mr. Stansill, Mr. Huff, Rod Hummel, Mr. Walton or
15 Mr. Gardner?

16 A. No.

17 Q. I'd like to, if you can, summarize your
18 educational experience perhaps, post high school.

19 A. Post high school, I attended the University of
20 Tulsa. I've attended Tulsa Junior College and the
21 University of San Francisco at -- in Guadalajara for a
22 summer session. And although I have close to 200 hours of
23 college credit, I still lack a undergraduate degree.

24 Q. During what period of years were you studying at
25 university or college?

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1 A. I began at the University of Tulsa in 1969. I
2 continued classes there, excuse me, there and in Tulsa
3 Junior College throughout -- until actually early the '90s.
4 I've taken classes, computer classes, math classes,
5 engineering classes, chemistry classes periodically
6 throughout that entire period of time.

7 Q. Have you ever taken classes dealing with
8 environmental issues, particularly pertaining to
9 agriculture?

10 A. Well, I -- there was a period of time I took a
11 number of classes in horticulture, greenhouse management,
12 irrigation and soil -- soil chemistry.

13 Q. Do you have any education about the fate and
14 transport of chemicals or bacteria in the environment?

15 A. No.

16 Q. What do you know about soil chemistry from your
17 training and education?

18 A. Well, it's been -- it's been a number of years ago
19 but I do know that the soil is broken up into horizons. I
20 know that -- that there are three -- three elements that
21 make up soils, silt, clay and sand. I know that -- well, I
22 don't know how much further to go on, but basically
23 that's --

24 Q. Did you take just one class in soil chemistry?

25 A. Just one class.

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1 Q. Would you characterize your knowledge of soil
2 chemistry as basic or advanced?

3 A. Basic, obviously taking one class.

4 Q. How long ago was it that you took that one class
5 in soil chemistry?

6 A. That would have probably been the late '80s, '88,
7 '89, somewhere along in there.

8 Q. Did you apply any of your knowledge of the soil
9 chemistry to your work in this case?

10 A. Just my basic knowledge of -- of impermeable
11 membranes as you -- as you apply fertilizer to -- to
12 vegetation and -- and you over -- over-apply it, it sets up
13 an impermeable membrane in the cell. And that's what
14 causes whenever you fertilize your yard and you don't water
15 it, that's what causes your -- your grass to turn brown.
16 It's the same situation. So basically I just have the
17 knowledge of that through chemistry and through my soil --
18 soil class.

19 Q. An impermeable membrane, can you define what that
20 is for me?

21 A. Well, it's -- again it's going back years, but
22 when you have a cell wall like in -- in a plant and you
23 apply a chemical to it, then it sets up a situation where
24 it can't accept water through the -- through the membrane.
25 And -- and so that causes a plant to wither and die, so --

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1 Q. Did you collect any samples of grass or litter or
2 anything to study and determine whether that had, in fact,
3 occurred at any property in this case?

4 A. No, I did not.

5 Q. If I understand your testimony correct, this is
6 background knowledge that -- that you had that you used to
7 interpret yellow grasses or something like that that you
8 might have seen during the course of your work?

9 A. Well, it -- just from my observations. And again,
10 I took no samples, but -- but it was just a matter of
11 just -- just my own personal observations during that
12 period of time.

13 Q. So if you saw yellow grass, you were thinking that
14 oh, we may have an impermeable membrane situation here?

15 A. No.

16 Q. I guess I'm struggling to understand what the
17 impermeable membrane because we -- let me back up.

18 A. Okay.

19 Q. We started here because I asked you if you applied
20 your knowledge of soil science to your work in this case.
21 And you told me about impermeable membranes.

22 A. Right.

23 Q. And I guess I'm trying to establish what's the
24 link between impermeable membranes and the observation work
25 that you did.

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1 A. Of course, well --

2 Q. In your mind.

3 A. Well, when I would be out there in one day and see
4 waste being applied to -- to a meadow and the meadow was
5 green, and then a few days later we would go to the same or
6 we would drive past the same meadow and the green grass was
7 now brown, then I would make -- my observation would be
8 that there was an over-application of fertilizer in that
9 case.

10 Q. Are you familiar with what the term agronomic rate
11 is?

12 A. I believe I have an idea of what that is.

13 Q. What is your understanding agronomic rate is?

14 A. Is that the rate to be applied per vector or per
15 area to a -- to a piece of property, the rate of fertilizer
16 or whatever you're applying to that soil? Is that what
17 you're referring to?

18 Q. Well, I'm just asking what your understanding of
19 agronomic rate is.

20 A. Okay. Well, I believe that's what -- at least
21 that's my understanding.

22 Q. Are you -- have you been asked to testify as an
23 expert in this case?

24 A. No, I haven't.

25 Q. And do you have any degree or certificate in

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1 agronomy?

2 A. No.

3 Q. Do you have any degree or certificate in soil
4 science?

5 A. No, I do not.

6 Q. Is it fair to say that your conclusion that there
7 was over-application on any given field, based on what
8 you've just testified to, is based solely on the color of
9 the grass?

10 A. Yes. And my observations that it was green on one
11 day while we observed an application and then a few days
12 later it -- it had changed.

13 Q. If you made such an observation, would you have
14 documented in your -- the forms that you were using in this
15 case that it was green on one day and that it was yellow on
16 a subsequent day?

17 A. I think I may have, yes.

18 Q. If you only saw for a first time that a field was
19 yellow, would you also make that same conclusion?

20 A. Probably having no prior knowledge of -- of its
21 condition before, I wouldn't make that conclusion.

22 Q. Would you agree that it would be inappropriate to
23 reach that conclusion if you had not seen some recent
24 transformation in the condition of the forage?

25 A. Yes.

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1 Q. Could you tell me when you first began police
2 work?

3 A. September the 18th, 1972.

4 Q. And you took a job in police work?

5 A. Yes.

6 Q. Where?

7 A. Tulsa.

8 Q. With the Tulsa Police Force?

9 A. Yes.

10 Q. And did you take that job after completing the
11 police academy?

12 A. Yes.

13 Q. And when did you complete the police academy work?

14 A. I began September the 18th, 1972. I completed the
15 Tulsa Police Academy December the 8th of 1972.

16 Q. And have you worked for the Tulsa Police
17 Department ever since?

18 A. Yes.

19 Q. 37 years to this point almost?

20 A. Yes.

21 Q. Congratulations. I'm sure the City of Tulsa
22 appreciates your service.

23 A. Well --

24 Q. Over the course of those 37 years of police work,
25 have you developed expertise in conducting investigations?

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1 A. I'm an investigator.

2 Q. It's okay to say yes if you've done 37 years of
3 investigatory work.

4 A. I just hate to be so bold as to say that I've
5 developed an expertise, but I am a detective in the Tulsa
6 Police Department and I am assigned to homicide and I work
7 for Sergeant Mike Huff in the homicide division.

8 Q. Over those 37 years, how many of the years have
9 you done detective work in one form or another?

10 A. Since 1996.

11 Q. Is that when you were first assigned to the
12 homicide unit as a detective?

13 A. That's when I was first assigned to the detective
14 division.

15 Q. Whether that be homicide or other types of
16 impossible crimes?

17 A. Yes.

18 Q. Once you completed your work at the academy, what
19 type of police work were you doing at the beginning of your
20 career?

21 A. As a uniformed field officer.

22 Q. And what does uniformed field officer do,
23 generally?

24 A. They drive around in a marked police car taking
25 calls for service and taking initiative when you see crimes

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1 in your presence and basically that's it.

2 Q. Was one of the responsibilities of being a
3 uniformed police officer to gather evidence if you saw that
4 or suspected that a crime had occurred at a particular
5 location?

6 A. Yes.

7 Q. Is it fair to say that in order to properly gather
8 the evidence, you had to have some understanding of what
9 the crime being committed was?

10 A. Yes.

11 Q. After -- how long were you a uniformed field
12 officer?

13 A. Well, over the -- obviously over the years, I had
14 different assignments that changed and where I would change
15 assignment and then go back to a field officer and then go
16 to another assignment. So I don't know how to -- how many
17 years actually I spent as a uniformed officer, but
18 obviously over the 37 years several of those years was as a
19 uniformed officer. I spent -- I had assignments in
20 planning and research, two different assignments in
21 planning and research and fugitive warrants. And like I
22 said periodically, I would return to the -- to the field.

23 Q. And they mixed it up for you a little bit along
24 the way?

25 A. Yes, sir.

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1 Q. Planning and research, what -- what kind of work
2 is that?

3 A. Planning and research.

4 Q. In the police context.

5 A. I'm sorry. I --

6 Q. I don't know anything about police work, you've
7 probably figured that out by now so teach me.

8 A. I had an assignment -- the first time in planning
9 and research I had an assignment to do a offense reporting
10 study where we -- we came up with a plan to do a -- to
11 change our offense reporting, obviously. And there was
12 several facets involved with that. And it's obviously --
13 anything in planning and research is to try to improve on
14 the -- the -- the police department's method of doing
15 business. Then my second assignment --

16 Q. Is it -- just fair to say that it's kind of
17 internally focused on how the police department organizes
18 itself and does its work?

19 A. Yes.

20 Q. Okay. Very good. And then -- you've been -- I
21 interrupted you. Go on.

22 A. And the second time I was there, another similar
23 project began, to try to change what we've been doing to
24 make a better effort, better response for the citizens.

25 Q. Okay. Did any of your work in planning and

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1 research address how to -- address or improve upon the
2 police department's enforcement of environmental laws?

3 A. No.

4 Q. You said you also worked in some capacity
5 regarding fugitive warrants?

6 A. Yes.

7 Q. Everything I know about fugitive warrants I've
8 probably learned on TV, but what -- what does it mean to
9 you?

10 A. We -- we searched for wanted individuals that we
11 believed that were in the -- in the City of Tulsa focusing
12 on -- on felons and working with the detective division
13 to -- to try to locate felons that we were most interested
14 in -- in locating.

15 Q. Was it important in the scope of conducting that
16 work to interview people when you were trying to track down
17 where felons were?

18 A. Yes.

19 Q. Is it fair to say that in the course of your
20 investigative work, it's always been important to talk to
21 and interview people to determine and to gather evidence
22 about an offense or potential offense?

23 A. Yes.

24 Q. Did you interview anybody in the course of your
25 work in this case?

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1 A. No, I did not.

2 Q. I don't know if I got an exhaustive list of -- I
3 probably didn't, of the types of work that you've done over
4 these 37 years. I've got that you worked as a uniformed
5 field officer, that you've had a couple occasions to have a
6 role in planning and research, that you've spent some time
7 addressing fugitive warrants and searching for wanted
8 people. And that in 1996, you were assigned to the
9 detective division, and in the course of that work at some
10 point you've focused on homicides. Is that a fair summary
11 of what we've talked about so far?

12 A. Yes.

13 Q. Okay. Other than those areas, are there any other
14 areas of police work that you've been engaged in over those
15 37 years?

16 A. Yes.

17 Q. Okay. What are -- what are the ones that I
18 haven't listed so far?

19 A. I was involved with the foot patrol and street
20 crimes in Uniformed Division North. I was involved with a
21 special operations team. I was involved with and
22 coordinated the police honor guard for a number of years.
23 And I kind of lose track of everything I've been with over
24 37 years.

25 Q. Fair enough. I think you're doing an excellent

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1 job. Your foot patrol and the street crimes work also
2 dealt with investigating potential offenses of various
3 types?

4 A. Yes, sir.

5 Q. In the course of that work, you would gather
6 evidence, talk with people, those kinds of things?

7 A. Yes, sir.

8 Q. Was it also important if you suspected that an
9 offense had occurred on a piece of property that you
10 actually went onto that property to see up close and
11 personal whatever evidence might be there?

12 A. Yes, sir.

13 Q. Okay. Did you have any opportunity in this case
14 to go onto any properties to gather evidence to see up
15 close and personal what evidence might be there?

16 A. No, I did not.

17 Q. Special ops team, now that sounds exciting. I
18 have to ask you, what does that entail?

19 A. It's -- the Tulsa Police Department refers to it
20 as a special operations team. I think citizens may
21 recognize it as SWAT. It's where you respond to armed and
22 barricaded-type situations.

23 Q. Didn't respond to any armed and barricaded growers
24 in this case, did you?

25 A. No, I did not.

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1 Q. Have we now exhausted your recollection as to the
2 general categories of work you've done over the 37 years?

3 A. Pretty close, I think.

4 Q. Okay. Anything else remarkable come to mind at
5 the moment?

6 A. Well, since my detective division, my first
7 assignment was in domestic violence. My next assignment in
8 the detective division was in what they referred to as
9 major crime unit where we were tasked with basically doing
10 crime scene processing and investigations of major crimes.
11 And then finally my -- my -- my last assignment has been in
12 homicide for the last ten years.

13 Q. In this case, my understanding is that all of the
14 investigators were directed to not go into any -- onto any
15 private property in the course of their work. Is that a
16 direction you received?

17 A. Yes, I did.

18 Q. Did you follow that direction?

19 A. Yes, I did.

20 Q. In the course of your investigatory work of all
21 the types of offenses that you've dealt with, have you ever
22 been limited in such a way?

23 A. No.

24 Q. If you needed to go onto private property, you'd
25 get a warrant or get permission; right?

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1 A. Yes.

2 Q. And in this case, you were not given the authority
3 to enter any private property under a warrant, were you?

4 A. No.

5 Q. And you were not allowed -- you were, I believe,
6 told not to make contact with property owners in this case;
7 correct?

8 A. Yes.

9 Q. So you didn't make any attempt to seek permission
10 to gain access to a property; correct?

11 A. That's correct.

12 Q. Is it fair to say that those restrictions
13 prevented you from making the kinds of specific
14 investigatory observations that you have done through the
15 course of all of your police work?

16 A. Well, I would say it was a different type of
17 investigation.

18 Q. It didn't allow you to go onto any property and
19 get up close and personal and touch and feel and sample the
20 evidence; right?

21 A. Right.

22 Q. Those are the kinds of things that you of
23 necessity do in your police work when you think an offense
24 has been committed; right?

25 A. Yes.

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1 Q. Transitioning to your work in this case.

2 A. Uh-huh.

3 Q. Can you generally give me an overview of what your
4 assignment was?

5 A. Yes.

6 Q. Or what assignments you had.

7 A. We had a number of assignments. One assignment
8 was to serve subpoenas in reference to this case. One
9 assignment was to -- to go to specific locations of
10 homeowners or property owners and receive waivers or
11 permission to -- to take water samples from their wells.
12 Another assignment was to -- to take aerial photographs of
13 what appeared to be houses, chicken houses, from aerial
14 photography with latitude and longitude directions and go
15 to those and make determinations if they were active or
16 not.

17 And another assignment was to -- to locate
18 and photograph active spreaders and to photograph them and
19 to indicate their locations by GPS so that soil samples
20 could be ultimately -- or water samples could be ultimately
21 be taken from those locations.

22 Q. Your understanding was that you were identifying
23 those spreading locations for the purpose of allowing
24 others to go sample them?

25 A. That was my understanding.

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1 Q. Did you accompany any crews, field teams who were
2 conducting sampling at any time?

3 A. No.

4 Q. Did you collect any samples at any time?

5 A. No, sir.

6 Q. And specifically I want to be sure that you didn't
7 sample any litter piles or suspected litter piles; right?

8 A. No.

9 Q. Did not sample any dirt piles; right?

10 A. No.

11 Q. Didn't sample any fields?

12 A. No, sir.

13 Q. Didn't sample any water?

14 A. No, sir.

15 Q. Okay. Didn't sample any water running off of a
16 field?

17 A. No, sir.

18 Q. Is it fair to say, I've talked with a number
19 investigators already, you also didn't conduct your work in
20 the rain; right?

21 A. No.

22 Q. Is that a correct statement?

23 A. Yes, it's a correct statement. Yes.

24 Q. And -- so you didn't have an opportunity to
25 personally observe any run-off leaving a field during a

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1 rainstorm, did you?

2 A. Not that I can recall.

3 Q. You said that you went to some properties to ask
4 people if they were willing to allow samples to be taken
5 from their wells; correct?

6 A. Yes.

7 Q. But you didn't take any samples of well water, did
8 you?

9 A. No, sir.

10 Q. And you didn't have a sampling crew standing there
11 with you who then went and took samples of the well water
12 if they said it was okay, did they?

13 A. No, sir.

14 Q. In what geographic-area, town do you recall that
15 these -- that your visits regarding getting permission for
16 well sampling was taking place? Where did you do that?

17 A. Pretty much throughout the Illinois River
18 Watershed.

19 Q. How do you -- well, I'll ask it. Do you know
20 where the Illinois River Watershed is?

21 A. My understanding is by virtue of the -- the data
22 that I was provided by Steve Steele.

23 Q. So your understanding was is if you went to a
24 location for -- to go make observations, that you were
25 making those observations in the Illinois River Watershed?

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1 A. Yes, sir.

2 Q. Is it fair to say you didn't do -- make any
3 independent determination of whether you were in the
4 watershed or not?

5 A. That's correct.

6 Q. When you were serving subpoenas, who -- what kinds
7 of people were you serving subpoenas on?

8 A. Just citizens. And I'm not sure what kind of
9 people they were, just --

10 Q. Do you know why they were being subpoenaed?

11 A. No. We were given the subpoena and the name and
12 the location and that's all I know.

13 Q. So you don't know what kind of witness they were?

14 A. No, sir.

15 Q. Were you under the understanding, though, that
16 those subpoenas were for commanding testimony in this case?

17 A. Yes, sir. I believe it was for depositions.
18 Well, actually I'm not sure, but it was -- it was in this
19 case.

20 Q. Okay. And when was that that you were serving
21 subpoenas?

22 A. Seems like it's been a couple years ago now. I
23 can't recall the -- the dates.

24 Q. Was that done in your capacity as -- let me ask it
25 a little different.

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1 Did you do that at the request of
2 Lithochimiea?

3 A. Well, I thought I was doing that at the request of
4 the Attorney General's Office of Oklahoma.

5 Q. So I'm just wondering, was it a part of this
6 investigation or was it a part of your ordinary police
7 work?

8 A. No. It was -- it was part of this -- it was part
9 of this investigation.

10 Q. And did you charge Lithochimiea for the time that
11 you spent serving subpoenas?

12 A. Yes.

13 Q. And who asked you to serve subpoenas?

14 A. Again, I believe it was Steve Steele.

15 Q. Do you know who directed Mr. Steele to go serve
16 subpoenas?

17 A. No.

18 Q. You mentioned one of the tasks that you were
19 involved in, and I wrote down the words, I think take
20 aerial photos of houses. Were you actually in an airplane
21 yourself taking pictures, aerial pictures?

22 A. No. We were giving -- given aerial photographs.

23 Q. Okay. So you weren't taking aerial photos, you
24 were using --

25 A. Exactly.

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1 Q. -- using photos?

2 A. Yes.

3 Q. So somebody was providing you with aerial photos
4 that had locations on those photos that you were directed
5 to go try and observe?

6 A. Yes, sir.

7 Q. And who provided you with the photos that you saw
8 and worked with?

9 A. Steve Steele.

10 Q. Do you know who was providing Mr. Steele with
11 those photos?

12 A. I assumed Lithochimiea.

13 Q. At the beginning of your efforts in this work, did
14 you attend any meetings or receive any training?

15 A. Yes.

16 Q. Tell me about that.

17 A. I attended one meeting at I believe the
18 Lithochimiea offices. And where we were -- we were told
19 what the -- what the lawsuit was and that this is what --
20 they would ask us to photograph spreaders and -- and use
21 GPS to document its location and to not -- not interfere or
22 to go on any property. Just to -- and not try to encounter
23 anybody. And -- and that was basically the -- the training
24 or the instruction that we were given.

25 Q. Did they tell you why you were doing this work?

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1 A. That the Attorneys General's Office, State of
2 Oklahoma was -- had a lawsuit with the poultry industry
3 over the spreading of poultry waste in the Illinois River
4 Watershed.

5 Q. You've used the term poultry waste a couple times
6 now in your deposition. Before you started working in this
7 case, did you ever use that term?

8 A. I don't think I was familiar with the lawsuit up
9 to that point.

10 Q. Is there any particular reason that you use that
11 term?

12 A. That's what it is, isn't it? Chicken feces,
13 poultry waste, I mean isn't that what -- what it is that we
14 were seeing to spread?

15 Q. Well, and I'm probably gonna ask you some
16 questions about that today.

17 A. Okay.

18 Q. But what -- what I'd like to know is who
19 familiarized you with that term, you didn't make it up on
20 your own?

21 A. No. I believe that's -- again, through the course
22 of doing this, that's what we came to know that it was, was
23 poultry waste.

24 Q. Fair to say that that's a term that was provided
25 to you by somebody at Lithochimiea or a lawyer in this

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1 case?

2 A. Yes.

3 Q. If I told you that the term waste has legal
4 significance, have you done anything to assess whether any
5 of the activities you saw involved legally defined waste?

6 MR. WILKERSON: Object to form.

7 Q. (BY MR. WALKER) I've asked if you've done
8 anything to assess that fact.

9 A. Do you mean have I -- do I have personal knowledge
10 that that was actually waste?

11 Q. That's a good question. Do you?

12 A. Well, I've smelled it and it smells like waste to
13 me. But as far as sampling it or having some kind of
14 chemical analysis to tell me, I didn't see it come from the
15 chicken if that's what you -- what you ask.

16 Q. Well, that's not really what I'm asking. I guess
17 waste can probably have all kinds of smells.

18 A. Uh-huh.

19 Q. You know, my paper cup of coffee when I'm done
20 with it and I throw it in the trash can might smell like
21 one thing. I'm wondering what -- what do you know about
22 what waste smells like?

23 A. Just from my experience during this period of time
24 in the -- the vicinity of the chicken houses, in the
25 vicinity of where it was being spread and I came to be --

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1 to be very familiar with that odor.

2 Q. The odor of the material that was being spread on
3 the fields?

4 A. Exactly.

5 Q. Whatever we want to call it; right?

6 A. Exactly.

7 Q. I'm gonna probably use the term poultry litter.
8 Are you familiar with that term?

9 A. Yes.

10 Q. Do you understand that to be the same thing that
11 you've been told to call poultry waste?

12 A. Well, I haven't been told to call it anything.
13 It's just that I am familiar with that term as well.

14 Q. Maybe I just misstated that, but somebody supplied
15 you with that term, you've adopted it for that own use; is
16 that a fair statement?

17 A. Well, whatever applies.

18 Q. I didn't understand that answer.

19 A. Well, you may refer to it as litter. It's waste,
20 whatever. It's the same -- we're talking about the same --
21 same thing, chicken feces and urine. Is that what we're
22 talking about?

23 Q. And do you know what else is in poultry litter?

24 A. Well, the -- are you talking about the shavings
25 that they -- they put down on the floor of the house?

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1 Q. Is that something that you understand is also in
2 poultry litter?

3 A. Well -- well, it's what -- it's what they bring
4 out of the house with a front-end loader and put in the
5 back of a spreader and take it to a pasture or meadow and
6 it's spread.

7 Q. Is it fair to say that you've never endeavored to
8 analyze what's in poultry litter or poultry waste?

9 A. Yes, sir. That's fair. I have not.

10 Q. We were talking about your meetings at the
11 beginning of this assignment. Do you recall who was
12 directing that meeting that you -- that you said occurred
13 at Lithochimiea?

14 A. I believe Mr. Garren was there. I believe a
15 gentleman from Lithochimiea was there. Again, Steve
16 Steele, Mike Huff and I think Gary Stansill. I can't
17 recall the entire number of people that were there, but it
18 was -- it was the only meeting that I attended at
19 Lithochimiea.

20 Q. It was Mr. Garren and do you know who Berton
21 Fisher is?

22 A. Yes. Well, I think I've -- I've met him a couple
23 of times.

24 Q. Was Berton Fisher at that meeting?

25 A. I think he was.

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1 Q. Was there anyone else from Lithochimiea at that
2 meeting? Do you know a Mr. Hight?

3 A. Well, it was held in their -- in their building,
4 but I can't recall. I don't believe I've met any -- met
5 anyone else from there since then.

6 Q. Have you ever had any conversations with
7 Mr. Fisher?

8 A. Probably at that meeting, maybe just superficially
9 an introduction and then nothing more than that. Other
10 than his instruction at the meeting and I don't believe
11 I've had a conversation with him since then.

12 Q. You said that you'd met him, I don't know if you
13 said several times or a few times?

14 A. I may have -- may have seen him, but as far as
15 talking to him or anything regarding to this, I haven't had
16 any -- any meetings with him.

17 Q. How many times have you seen Mr. Fisher?

18 A. Maybe twice.

19 Q. One time in this first training meeting; right?

20 A. Uh-huh.

21 Q. And then another time after that?

22 A. Another time and it may have been socially. He
23 may have been with Steve Steele when I ran into them, but
24 it was -- and I can't recall the exact time, but I think it
25 might have been at a social -- just run into them socially.

1 Q. Is it fair to say you didn't have any material
2 discussions with Mr. Fisher about your work in this case?

3 A. No.

4 Q. Other than perhaps listening to him and what he
5 had to say in that initial meeting?

6 A. Yes.

7 Q. What did he have to say in that initial meeting?

8 A. Again, just that our responsibility would be to go
9 over into the Illinois watershed, observe spreading of --
10 of chicken litter or whatever -- whatever you referred to
11 it as. And photograph it and document it by using GPS
12 and -- and again, just to -- to not go onto any private
13 property, just make your observations from public roads
14 and -- and to not -- to encounter anybody. If they -- if
15 they wanted to talk to us or anything, avoid them.

16 Q. Did you actually operate GPS equipment in the
17 course of your work in this case?

18 A. Yes, I did.

19 Q. Had you ever operated GPS equipment before doing
20 work in this case?

21 A. Doing --

22 Q. Had you used a GPS before?

23 A. Yes.

24 Q. Had you used the particular model of GPS that you
25 used in this case?

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1 A. I can't recall specifically, but I'm not sure if I
2 had or not.

3 Q. Did Lithochimiea give you any training on how to
4 use the GPS equipment in this case?

5 A. Steve Steele did.

6 Q. So you didn't -- did you get that training in that
7 initial meeting or sometime afterwards from Mr. Steele?

8 A. Afterwards.

9 Q. Other than GPS training that Mr. Steele gave you
10 after this meeting, did you receive any other training in
11 the course of your work?

12 A. You mean?

13 Q. On this case.

14 A. On this case. Just occasional updates on what
15 they -- what they wanted us to do and how they wanted us to
16 do it.

17 Q. Did the State of Oklahoma ever tell you that
18 poultry litter is a hazardous waste?

19 A. I had no conversations with anyone other than I've
20 told you. So whether they represented the State of
21 Oklahoma or but --

22 Q. Is that a no? The question is, did anybody -- did
23 the State of Oklahoma tell you that poultry litter is a
24 hazardous waste at any time?

25 A. Well, I'm not quite sure how to answer that

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1 question. I assumed that we were working for the Attorney
2 General's Office who's the State of Oklahoma. I assumed
3 that Lithochimiea was -- was a agent for the State of
4 Oklahoma and Mr. Garren also. And -- so if -- so if they
5 were telling us, I assumed that they were -- that they were
6 part of the State of Oklahoma through -- their efforts
7 through the Attorney General's office.

8 Q. I think you're maybe making this more difficult.
9 Let me -- let me back up and be more general and start from
10 the most general.

11 Has anybody ever told you that poultry litter
12 is a hazardous waste?

13 A. Well, I can't recall if -- if there was a specific
14 statement. I mean, if they came out specifically and told
15 me like that. They just -- they gave us the task to
16 photograph and document. So to answer your question, I
17 don't believe so, no.

18 Q. Do you recall Mr. Garren telling you that poultry
19 litter is a hazardous waste?

20 A. I really can't recall specific statements that
21 Mr. Garren made or that were made.

22 Q. You don't recall any specific statement of
23 somebody saying that poultry litter is a hazardous waste?

24 A. I can't recall the specific statements.

25 Q. Has anybody ever told you that in the course of

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1 your work, you might encounter harmful bacteria?

2 A. I believe so.

3 Q. Okay. Who told you that?

4 A. I believe Steve Steele.

5 Q. And when did he tell that you?

6 A. I can't recall.

7 Q. Did Mr. Steele give you any instructions on how to
8 protect yourself?

9 A. No.

10 Q. Did the State of Oklahoma or anybody you believe
11 might be working for the State of Oklahoma give you
12 instructions on how to protect yourself in the course of
13 your work?

14 A. No, not that I can recall.

15 Q. Did anybody that you worked with or attended
16 meetings with in this case tell you that your health might
17 be at risk from the activities that you were to be engaged
18 in?

19 A. I think I understood that.

20 Q. And how did you understand that?

21 A. Through my -- my own personal -- basically
22 knowledge.

23 Q. Did you ever get sick from anything that you would
24 attribute to the work that you did in this case?

25 A. No.

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1 Q. Did the State of Oklahoma or anybody that you
2 worked with provide you with any personal protective gear
3 for the purpose of your work in this case?

4 A. No.

5 Q. So you didn't get any coveralls; right?

6 A. Yes -- no.

7 Q. No booties or gloves or dust masks or anything
8 like that; right?

9 A. Right.

10 MR. WALKER: Mark that as 2.

11 MR. CHADICK: We've seen it before.

12 (Exhibit No. 2 was marked.)

13 MR. WALKER: My feelings were hurt that I
14 found the exhibits I passed out yesterday on the conference
15 table that nobody wanted to take home.

16 MR. FREEMAN: I took mine home when I left
17 yesterday.

18 MR. CHADICK: So if you're missing any,
19 they're in the trash can right there.

20 MR. WALKER: Thanks for cleaning up.

21 Q. Mr. Nance, the court reporter has marked for
22 Exhibit 2 a compilation of three documents that I prepared
23 so that I could ask you some questions about it. Can you
24 identify what the first page of Exhibit 2 is?

25 A. It's a form that -- that we used to -- to complete

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1 during our task.

2 Q. And you -- you described and listed for me a short
3 time ago the various tasks that you did perform. Was this
4 form specific to one of those tasks?

5 A. Yes, sir.

6 Q. Which tasks was this form used for?

7 A. I believe this was the form we used to identify
8 whether or not a -- a house was active or the -- or the
9 condition of the -- the house.

10 Q. If you could turn to the next page of Exhibit 2
11 and tell me if you recognize that form.

12 And I tried to find blank forms. There's a
13 little writing on this one, but I'm really just asking
14 about the form itself.

15 A. Sure. It's been a couple of years. This one --
16 this one may have been the -- the house or the form. The
17 second page may have been the one to identify active
18 houses.

19 Q. Is that -- that what your recollection is?

20 A. Well, I'm trying to.

21 Q. And I'll tell you, I'm not trying to trick you
22 here. Mr. Steele testified that the first form was -- was
23 initially used for identifying active houses and the second
24 form was subsequently used for identifying active houses,
25 if I've correctly stated his testimony. Do you have any

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1 reason to disagree with that?

2 A. No, I do not.

3 Q. If you could turn to -- I'm sorry?

4 A. No, I have no reason to disagree with that.

5 Q. If you could turn to the third form of Exhibit 2
6 and just tell me if you recognize that form.

7 A. Yes.

8 Q. Okay. And what among the tasks that you had was
9 that form used?

10 A. This one was to document spreaders on pastures and
11 meadows and to indicate the photo frame of the -- the
12 photograph that we took, the direction that we were taking
13 the photograph and the -- we had a laser range finder to
14 determine the range that we were taking the photograph of
15 and then the -- the waypoint with the latitude and
16 longitude of that and the date and time and the -- the
17 observers that were present and if you -- any notes that we
18 may have to -- to add to that.

19 Q. You're the first person who's said anything about
20 using a laser range finder. Can you tell me who gave that
21 to you?

22 A. Steve Steele.

23 Q. Do you know where he got it?

24 A. No.

25 Q. Do you know if all the other teams had a laser

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1 range finder who were doing this work?

2 A. No.

3 Q. And did you actually use the range finder?

4 A. Yes.

5 Q. And you used it for what purpose?

6 A. Well, unfortunately, I didn't use it often. But
7 the purpose was if we were on a public road and we
8 witnessed spreading occurring at some distance in a meadow
9 or pasture, we would -- we would photograph it, we would
10 take the latitude and longitude and then with the benefit
11 of the -- the range finder we could -- and the direction,
12 we could ascertain how far away that truck was -- actually
13 was from our location. I assumed to get a better
14 understanding of where -- where that truck was in relation
15 to the actual latitude and longitude that we were recording
16 at that time.

17 Q. So is it fair to say that the only purpose you
18 used the laser range finder was to determine the distance
19 of the truck from your point of observation?

20 A. Yes.

21 Q. You didn't use the laser range finder to measure
22 anything else in this case; correct?

23 A. That's correct.

24 MR. WALKER: I would like to take a break
25 now. We've been going about an hour and we'll resume in

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1 five or ten minutes. Okay?

2 THE WITNESS: Okay.

3 THE VIDEOGRAPHER: We're off the record at
4 9:42 a.m.

5 (Break was taken from 9:42 a.m. to 9:51 a.m.)

6 THE VIDEOGRAPHER: This is beginning of Tape
7 No. 2. We're back on the record at 9:51 a.m.

8 Q. (BY MR. WALKER) Mr. Nance, before we took a
9 break, we were looking at some of the forms in Exhibit 2
10 and I'd like to go back to Page 1 of that exhibit. Were
11 you trained in any way on how to complete this form in the
12 course of your work?

13 A. I think we just covered it with Steve Steele.

14 Q. When you did your work, my understanding is you
15 generally worked in teams of two; is that correct?

16 A. Yes.

17 Q. Were you assigned a regular teammate?

18 A. I wasn't assigned to anyone, just who could work
19 on that day is generally how that came up.

20 Q. You worked with a variety of people in -- in your
21 work in this case?

22 A. Yes.

23 Q. Did you understand that in using this form for
24 each observation, you were supposed to complete the date
25 and time and who was making the observation?

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1 A. Yes.

2 Q. And that's what you did?

3 A. Yes, sir.

4 Q. And you were also to record the latitude and
5 longitude of your observation point?

6 A. Yes, sir.

7 Q. And that would be the observation point in the
8 public roadway?

9 A. Yes, sir.

10 Q. On the form in the upper right-hand box, it has
11 poultry type and it states broiler, layer, pullet, turkey.
12 Do you -- do you know the difference between a broiler,
13 layer or a pullet?

14 A. I don't think so and I don't think I ever used
15 that -- that part of the form.

16 Q. You'd just skip over that one; right?

17 A. Yes.

18 Q. Under identifying information, what was the
19 purpose -- what were you recording -- let me just start
20 over.

21 What were you recording in the identifying
22 information section?

23 A. I think that may have indicated -- in virtually
24 every -- every house we saw it had some identifier as to
25 which -- which company that they were affiliated with.

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1 Q. If you went to a piece of property, that you would
2 get that information off of a sign if there was one?

3 A. Yes. And if was there an address at that
4 location.

5 Q. And -- and where would you get the address?

6 A. Well, to be perfectly honest, I can't recall
7 exactly that part, but I think the sign was -- was just to
8 indicate who the -- the company was that they were
9 affiliated with.

10 Q. Did you do anything to verify on the ground
11 whether any posted signs actually correctly represented who
12 was at the property?

13 A. No. If there was a sign there, we just indicated
14 what sign it was and did no further verification.

15 Q. If there wasn't a sign there, what did you do with
16 respect to how you filled this form out?

17 A. Just left that blank.

18 Q. And is it fair to say if you just went to some
19 open field, that there were numerous occasions that there
20 was no sign indicating who might operate that field?

21 A. Well, I think this form was to indicate houses and
22 so the -- so the -- the sign would have been which is
23 associated with that particular house.

24 Q. And were there times where you went to a location
25 where there were structures of some sort that you were

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1 supposed to observe where there was no sign?

2 A. I think probably, yes, sir.

3 Q. Moving just below that part of the form in the
4 center in bold it says, could be observed from public
5 access, yes/no. What was the purpose of that entry?

6 A. Sometimes there were -- there were signs at
7 entrances to -- or gravel roads that went off that
8 indicated that this is where a -- a house was located and
9 oftentimes we were just not able to observe -- make that
10 observation without going on private property.

11 Q. Those were instances where you were looking for a
12 particular house based on the aerial photo that you were
13 given but you could not see the house from any public road?

14 A. Yes, sir.

15 Q. Okay. And in those cases, there may -- may or may
16 not have been a sign; right?

17 A. Yes, sir.

18 Q. You were just going to a place on a map to see
19 what you could see?

20 A. Yes, sir.

21 Q. The -- working down through this form --

22 A. Yes.

23 Q. -- the next section indicates that you were to
24 make observations about the physical condition of the
25 structure. Do you see that?

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1 A. Yes, sir.

2 Q. Okay. Did you make those kinds of observations?

3 A. Yes, sir.

4 Q. What criteria were you -- were you given, if any,
5 to assess whether a structure was in good, fair or poor
6 condition?

7 A. Just basically -- basically our common sense, I
8 guess, and our experience with making observations of the
9 conditions of houses.

10 Q. So over the course of time you kind of developed
11 your own sense of what good, fair or poor meant?

12 A. Yes, sir.

13 Q. Nobody told you, okay, a good condition barn meets
14 these criteria and a fair barn meets these and poor meets
15 these?

16 A. No.

17 Q. Nobody told you that?

18 A. You're correct. Yes, sir.

19 Q. And then there's an entry that says raised,
20 R-A-I-S-E-D, what was that intended to mean?

21 A. Now I'm not sure that I recall what that -- what
22 that intends to mean.

23 Q. And then overall, were you supposed to make some
24 conclusion based on your observations of whether the
25 facility that you were there to observe was active,

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1 inactive, abandoned or unknown?

2 A. Yes, sir.

3 Q. And did you endeavor to reach those conclusions?

4 A. Yes.

5 Q. Based on what you could see from the public
6 roadway; right?

7 A. Yes, sir.

8 Q. Over to the right, it has a number of entries for
9 physical plan components. Do you see that?

10 A. Yes, sir.

11 Q. What was the purpose of making observations, if
12 you could, of those listed items?

13 A. Again, to determine if the -- if the house was --
14 was being used and -- and I think to determine if -- if
15 these were present, propane tanks, feed silos, ventilation
16 fans and whether we were able to observe litter or cake
17 storage or whether it was covered or not. If the side
18 curtains on the houses were present and if they were up or
19 down or how they were used. And -- and again, their
20 condition, good, fair or poor condition.

21 Q. And the same thing for your assessment of the
22 condition, it was based on whatever judgment you felt
23 appropriate?

24 A. Yes, sir.

25 Q. Moving down the form, it asks for a number of

1 observations regarding observed activities. Do you see
2 that?

3 A. Yes.

4 Q. And could you tell me what the purpose of those
5 observations was?

6 A. Again, to make an assessment whether or not the --
7 the house was being used, if -- obviously if there were
8 workers present, if equipment was present, like front-end
9 loaders, feed trucks, manure spreaders, that type of
10 equipment that was present and just to -- just to indicate
11 so on the form.

12 Q. And then just to the right of that, there's a
13 category with -- called other and what was the purpose of
14 those observations?

15 A. If -- if we observed litter stacked or do
16 litter -- if we -- if we observed feathers on the ground or
17 the odor of litter or poultry sounds, if we could hear,
18 let's say, chickens in the -- from our position in the --
19 in the house, it may indicate if it was an active house or
20 not.

21 Q. Okay. So all of those observations for the
22 purposes -- were for the purpose of determining activity or
23 not of that facility?

24 A. Yes, sir.

25 Q. Can you tell me what your understanding is of what

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1 stacked used litter/cake is?

2 A. If -- if they had used -- if they were in the
3 process of cleaning out a house and they had moved it out
4 of the house and it was stacked up outside of the house on
5 the ground in the open.

6 Q. That that would indicate to you if they were doing
7 clean-out activities, that it was an active --

8 A. Yes, sir.

9 Q. -- farm?

10 A. Yes, sir.

11 Q. What is your understanding of what stacked new
12 litter means?

13 A. I'm not sure about the new litter. But we would
14 observe shavings, obviously, in preparation for putting new
15 shavings down in a recently cleaned out house. And -- but
16 as it applies to stacked new litter, I'm not sure what the
17 difference between new litter and used litter is. If it's
18 litter, I just can't recall that -- that -- how we
19 designated that.

20 Q. And -- and the way that you used this form, did
21 you make any distinction between whether you checked
22 stacked used litter/cake versus stacked new litter?

23 A. Well, again, I -- I just can't recall at this
24 point those -- those specific decisions.

25 Q. So you're -- you're not sure in the way that you

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1 used this form of what you considered stacked new litter?

2 A. Well, again, at this point I just can't recall
3 those specific distinctions.

4 Q. If you turn to the second page of Exhibit 2. It
5 has -- is this a form that you recall using? I know you
6 were confused about what it is.

7 A. Well, I think -- I think the form changed
8 during -- and I think we may have started with this one and
9 then -- and then changed to this one.

10 Q. So you think you might have started with the
11 second page of Exhibit 2 and eventually later began using
12 the first page of Exhibit 2?

13 A. I think so.

14 Q. The second page of Exhibit 2 has a column for
15 checking particular observations on the left-hand side a
16 little ways down the form. Do you see that?

17 A. Yes.

18 Q. That starts good condition and then next it says
19 new or used litter on ground and so on. Do you see that?

20 A. Yes. Yes.

21 Q. When you used this form or if you used this form,
22 I guess, did you make any distinction in the observation of
23 new or used litter on ground whether the litter was, in
24 fact, new or whether it was used?

25 A. Again, I can't -- I can't recall the distinction

1 on that now. And it would have been from our observations
2 from -- from the public roadway, but --

3 Q. So if we saw a form that you completed that has
4 checked new or used litter, you weren't making a
5 distinction between new or used on the form?

6 A. Again, I can't recall what distinction we were
7 using to differentiate between new or used, so I -- I
8 can't -- I can't recall that.

9 Q. When you were out in the field making these
10 observations, did you always drive, never drive, how did
11 that work?

12 A. I believe I was -- I -- I never drove. I think
13 there's one time I drove. But other than that, just every
14 other time I was a passenger.

15 Q. So -- and as to the allocation of responsibilities
16 in the car, was -- as the passenger, were you the one who
17 was filling out the forms?

18 A. Yes. Yes.

19 Q. Because the other person was busy at the wheel;
20 right?

21 A. Right.

22 Q. And you would have been the person taking any
23 pictures if you -- of the observations?

24 A. Most of the time, but depending on our orientation
25 to the -- to what we were photographing, sometimes the

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1 driver may take the -- take the camera and make photographs
2 also.

3 Q. Okay. On the left side of the car, he might stop
4 and then the driver would take the picture?

5 A. Yes, sir.

6 Q. But in that case, you'd still fill out the form
7 about the observation?

8 A. Yes.

9 Q. Same circumstance for videos, you -- you might
10 take one or the driver might take one depending on what you
11 were trying to video?

12 A. Yes, sir.

13 Q. Which direction you were shooting?

14 A. Yes, sir.

15 Q. Describe for me the -- the process, whether it was
16 daily or weekly, that you received the blank forms and the
17 maps and the assignment for where you were gonna go.

18 A. Well, generally, we would receive our -- our --
19 everything that -- the cameras, all of our equipment, the
20 GPS equipment, the laser equipment, the forms or workbooks
21 or whatever, we would receive all that from Steve Steele
22 the morning that we would go to Arkansas. We would drive
23 to Arkansas and -- and basically what our assignment would
24 be, if we were -- we were going over there to -- to -- to
25 determine if houses were active or not or whether we were

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1 going over there to -- to observe spreading. And -- and so
2 we would drive to Arkansas and if -- if we were -- we were
3 going to the assignment to -- to determine whether houses
4 or the condition of houses, we -- we had a series of aerial
5 photographs and -- with -- with latitude and longitude on
6 them. And I would take the GPS and -- and -- and put that
7 latitude and longitude in the GPS and basically have that
8 direct us to that location from -- by use of the GPS.

9 And then we would verify through the --
10 through our observations that this was the house that we
11 were observing on the aerial photographs. And -- and then
12 we would complete the form based -- based on our just
13 subjective determination of what condition it was, good,
14 fair or poor. And -- and that would be for that
15 assignment.

16 If we were going over to document spreading,
17 we would just -- again, we -- we would have knowledge of --
18 of where the -- where we were told the Illinois Watershed
19 was located and we would drive randomly throughout that
20 area looking for spreader trucks or evidence of -- of
21 spreading. We would find houses that were open that had
22 litter in front of it and/or that looked like there were
23 people working, there were spreader trucks parked there.
24 We would see evidence of -- of litter from -- from the
25 house on the -- on the road, feathers and litter. Where

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1 would be the road, sometimes we would follow the trail
2 to a -- to a field to a pasture or a meadow and we would --
3 we would see a spreader truck spreading at that location.

4 And we would -- again, we would take a
5 waypoint with the GPS and photograph the spreading that was
6 occurring at that time. Sometimes we would just be
7 randomly driving and see a spreader truck spreading and we
8 would stop and document it.

9 Q. And when you finished creating your documented
10 record of your observations for the day, what did you do
11 with your records at the end of day?

12 A. Well, we would -- we would again return and meet
13 up with Steve Steele and hand him all of that. The --
14 because they would -- my understanding was that they would
15 take the -- the digital disk from the camera to -- to
16 download. They would take the waypoints from the GPS and
17 download. They would take out notes from that day or our
18 worksheets and take that information and -- and so we would
19 hand that to them. And so we had nothing of our own to --
20 any -- any records of our own that we would keep.

21 Q. At the end of the day, would you give Mr. Steele
22 the chip from the camera?

23 A. Well, we would give him the camera. We'd just
24 give him all of our equipment.

25 Q. What did you do for equipment --

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1 A. Well, we'd meet up --

2 Q. -- the next day?

3 A. Well, we'd meet him again and he would -- he would
4 provide us the equipment the next day.

5 Q. So you'd give him the paperwork and you'd give him
6 the camera and you'd give him the GPS unit?

7 A. Well, at least that's my recollection, because --
8 because I didn't drive. You know, I didn't have the
9 equipment, so -- but I believe that was the way it was.
10 I -- I just -- I know that he would get the -- the chip and
11 the GPS and the worksheets in order to, I guess, take them
12 and download them and utilize this for their records.

13 Q. Were there times that you were out surveilling and
14 you -- you generated this information that you were not
15 present when it was handed over to Steve Steele?

16 A. No. I -- I was present for that because we would
17 meet up somewhere between our trip back and -- and so we
18 would meet with him and provide all of this to him.

19 Q. Referring to the -- the first page of -- of forms
20 on Exhibit 2, how long would it typically take you to make
21 the observations and record the information for any
22 particular property?

23 A. Well, we would -- we would stop out in front of a
24 house. Again, we -- we tried to keep from encountering
25 anyone. But if -- and again, sometimes we would pull

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1 down -- pull down the road a short distance where I
2 could -- I could complete the form. But, you know,
3 anywhere from 10 or 15 minutes probably, however long it
4 take me to go through and fill the form out. If we
5 could -- if we could stop out in front of the road and --
6 and do it there, we would do it or, like I said, sometimes
7 we'd pull down -- a little ways down the road where we
8 could pull off the road and do it and still maybe see the
9 house.

10 Q. If -- if you thought you were in a location where
11 you might be seen by the landowner, then -- then you
12 continued on until you could find a spot where you thought
13 you wouldn't be seen?

14 A. Yes, sir. As I recall, another piece of equipment
15 that I just recalled is we had -- we were given some
16 binoculars as well that we could use to make observations
17 from.

18 Q. Make observations of the activities on the farm
19 that you were there to look at?

20 A. Yes.

21 Q. Sounds to me like you were kind of spying on these
22 people. Is that what you were doing?

23 MR. WILKERSON: Object to form.

24 THE WITNESS: Do I answer?

25 MR. WILKERSON: You can answer.

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1 A. I don't know if you'd call it spying. We were
2 just documenting activities.

3 Q. (BY MR. WALKER) Well, you were -- you weren't
4 just documenting activities. You've just testified that
5 you were documenting activities, taking care to be in
6 locations that could not be seen; right?

7 A. Well, we didn't want to encounter -- I mean, we
8 didn't want to -- to have an encounter with someone.

9 Q. And I didn't ask you why. I'm asking you -- and
10 you've just testified to it, that you took care to go to
11 locations that you could not be seen; right?

12 A. Well, give me a definition of spy, I mean.

13 Q. Ever used the word?

14 A. I guess I never characterized myself as James Bond
15 over there in the -- in the -- the chicken houses.

16 Q. I -- I -- I've --

17 A. I guess if they're making clandestine or if we're
18 making observations, I guess maybe you could in -- in a
19 certain way characterize as it as spying.

20 Q. Well, I'll use your word. You were making
21 clandestine operations of the operations of these
22 facilities; right?

23 A. Probably, yes.

24 Q. And you -- and you were doing so because you
25 didn't want these people to know you were there; right?

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1 A. Well, we didn't -- we didn't want to get into an
2 angry encounter with somebody.

3 Q. You didn't get into any angry encounters with
4 anybody, did you?

5 A. We came close a few times.

6 Q. Well, I didn't ask how close you came. Did you
7 get into any angry encounters with anybody?

8 A. No.

9 Q. Now, tell me about how close you came to what you
10 thought might be an angry encounter.

11 A. Well, we were stopped at a highway one day and
12 watching spreading occurring at a -- at a -- in a field or
13 a -- a -- where we could see it and a -- a man came up to
14 us and quite angrily was yelling in the -- in the driver's
15 window of the car about what we were doing and why we were
16 doing it there and --

17 Q. Did you tell him?

18 A. We just -- we -- we told him that we were
19 documenting. I believe that -- that that's -- that what
20 was the statement that we were here documenting.

21 Q. Did you tell him that you were working for the
22 State of Oklahoma?

23 A. No.

24 Q. Did you tell him that you were working for the
25 lawyer Rick Garren in the Riggs Abney law firm?

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1 A. We said that we were documenting. That was --
2 that was the -- I believe that was the extent of our
3 response.

4 Q. Did you tell them that you were gathering evidence
5 for a case that the State of Oklahoma is pursuing against
6 the poultry companies?

7 A. No. There -- there was another instance where we
8 were following a -- a spreading truck and a man in a blue
9 Dodge Ram pickup pulled in front of us and blocked the road
10 to where we couldn't -- we couldn't go down the road, so we
11 just backed up and drove another direction.

12 Q. If you discovered that somebody was clandestinely
13 surveilling your home --

14 A. Uh-huh.

15 Q. -- do you think that might upset you?

16 A. Sure.

17 Q. Do you think you might walk up to whoever that was
18 and ask them what it was they were doing?

19 A. Yes.

20 Q. And would you expect them to give you an honest
21 answer?

22 A. No.

23 Q. Fair enough. Would you want an honest answer?

24 A. Of course.

25 Q. In the course of doing your work, did you take

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1 care when you were documenting the work on these forms to
2 write down anything that you thought was important or
3 that -- that you were tasked to observe?

4 A. I believe I was, as carefully as I could be.

5 Q. And you have, off and on, anyway, in 37 years of
6 police work experience, that tells you the importance of
7 doing that; correct?

8 A. Yes, sir.

9 Q. Other than Mr. Garren and Mr. Fisher who we've
10 already discussed today --

11 A. Uh-huh.

12 Q. -- have you talked with anybody who you believe or
13 understand to be representing the Attorney -- Attorney
14 General in this case?

15 A. No.

16 Q. Have you talked with Mr. Edmondson himself about
17 this case?

18 A. No -- no, sir.

19 Q. Have you ever met Mr. Edmondson?

20 A. No.

21 Q. Are you aware that Mr. Fisher issued a report of
22 his findings in this case?

23 A. No.

24 Q. I take it, then, that Mr. Fisher never gave you a
25 copy of his report to review or comment upon?

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1 A. No.

2 Q. Are you aware that Mr. Fisher's report relies on
3 observations of your investigation team?

4 A. I would -- if -- if you told me that he made a
5 report, I would assume that that's what it was based on.

6 Q. But he didn't give you an opportunity to check on
7 his work in the way he characterizes work that you
8 performed?

9 A. No.

10 Q. Other than Mr. Garren, Mr. Fisher, Mr. Steele and
11 the other investigators that worked on this case, have you
12 talked to anybody else about this case and your work in
13 this case?

14 A. No.

15 Q. Did you have a contract with anybody for your work
16 in this case, a written contract?

17 A. No, not that I'm aware of or that I recall.

18 Q. Who supervised the work that the investigators did
19 in this case?

20 A. Steve Steele.

21 Q. What was your understanding of who you worked for
22 in this case?

23 A. My understanding was I worked for the Attorney
24 General's office. That's what the lawsuit, State of
25 Oklahoma through the Attorney General's office was about.

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1 That was -- that was my understanding.

2 Q. In the course of -- of your training to conduct
3 this work, did you receive any specific training about how
4 the poultry business is run?

5 A. No.

6 Q. Did you -- do you have any personal knowledge
7 about the business relationship between an integrator
8 company, which are the defendants in this case, and the
9 farmers, poultry growers that you were observing in this
10 case?

11 A. No.

12 Q. Do you have any personal knowledge of poultry care
13 and husbandry practices?

14 A. No.

15 Q. Do you have any personal knowledge of litter
16 management practices in the poultry industry?

17 A. No.

18 Q. Do you have any personal knowledge of poultry
19 mortality management practices?

20 A. No.

21 Q. Do you have any personal knowledge regarding any
22 differences between how chickens and turkeys are raised?

23 A. No.

24 Q. Do you know what a one-stage versus a two-stage
25 versus a three-stage poultry growing operation is?

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1 A. No.

2 Q. Do you have any personal knowledge of the various
3 types of litter that are generated in the course of raising
4 poultry?

5 A. I'm not sure I understand that question.

6 Q. I'll ask it this way perhaps. Do you have any
7 personal knowledge of what the nutrient content is in
8 various poultry growing operations?

9 A. No.

10 Q. And I meant to say in the litter for various
11 poultry growing operations. I think I asked you this, but
12 I want to be sure. Do you have any personal knowledge of
13 the fate and transport of chemicals or bacteria in the
14 environment?

15 A. No.

16 Q. Other than what we've already talked about, about
17 the -- the basis for your opinions or observations of what
18 you called over-application of fertilizer, do you have any
19 other basis for those kinds of statements, either education
20 or training or otherwise?

21 A. Just the chemistry classes I've taken and the soil
22 science classes I took. That's all.

23 Q. Have you ever raised crops for a living?

24 A. No.

25 Q. Have you ever lived on a farm?

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1 A. No.

2 Q. I take it you've also never been in the poultry
3 business?

4 A. Correct.

5 Q. Have you ever been in the cattle business?

6 A. No.

7 Q. Have you actually ever been on a poultry farm?

8 A. No.

9 Q. Are you familiar with the seasonal variations in
10 color between different kinds of grasses?

11 A. Yes.

12 Q. Tell me what you know about that.

13 A. Are you talking like -- like when Bermuda grass
14 here in Oklahoma turns dormant and turns brown as opposed
15 to when it gets green in the summertime? Is that what
16 you're talking about?

17 Q. Well, that -- that would be one example. What
18 else do you know?

19 A. Are you talking about just its natural occurring
20 or when it's -- where fertilizer's been applied to it or --
21 or some type of chemical to kill -- to kill like, you
22 know -- I guess clarify your question.

23 Q. I guess what you're testifying to is that there
24 are a number of reasons that grass changes colors; is that
25 true?

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1 A. Oh, absolutely.

2 Q. And only one of those reasons is what you've
3 called over-application; right?

4 A. Yes, sir.

5 Q. In the course of preparing the documentation of
6 your observations in this case, was there any quality
7 control, quality assurance, review process to verify the
8 accuracy of that information as far as you know?

9 A. As far as I know, well, I have no knowledge of
10 that.

11 Q. No -- No -- nobody said to you, hey, I've reviewed
12 these forms and -- and there seems to be something we need
13 to clarify or correct here?

14 A. No.

15 Q. Did you ever receive any comment from anyone about
16 any of the entries that you made on a form?

17 A. No.

18 Q. Do you know whether Mr. Steele was reviewing the
19 paperwork that you created?

20 A. I have no idea.

21 Q. Did you do anything to calibrate or maintain or
22 verify the accuracy of the GPS equipment that you were
23 using?

24 A. No. You mean to -- to verify it?

25 Q. That's correct.

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1 A. Okay. Like I mentioned before, we had aerial
2 photographs of houses with the latitude and longitude
3 locations. I navigated -- navigated to those houses by
4 virtue of the -- the GPS. And then I was able to confirm
5 the accuracy of that by observing the house on the aerial
6 photograph and confirming that this is the house that
7 we're -- we're looking at and that -- so it coincided with
8 the latitude and longitude of the aerial photograph we --
9 that I had with my handheld GPS.

10 Q. So the -- the -- the GPS would get you to the area
11 that you were looking for and then you'd use the map to
12 identify -- coincide what was on the ground corresponded
13 with what was on the map?

14 A. Yes, sir.

15 Q. But you didn't take the opportunity to get any GPS
16 coordinates of where the actual barns that you were looking
17 at were located; right?

18 A. No. Those were on -- those were printed on the
19 aerial photographs.

20 Q. Your GPS coordinates were coordinates that you had
21 on the road; right?

22 A. Yes.

23 Q. Did you do anything to verify the accuracy of the
24 GPS report coordinate information that you recorded on the
25 forms themselves?

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1 A. No, sir.

2 Q. So you didn't do anything to check and be sure not
3 to transpose any numbers or write down the wrong number in
4 any case, did you?

5 A. Well, I put that on the form but then we had
6 the -- the GPS that I assumed that they used to download
7 that information from the -- from the device itself.

8 Q. If the GPS information was already retained in the
9 unit by having electronically logged the waypoint, that's
10 what you're talking about; right?

11 A. Yes, sir.

12 Q. Do you understand or do you know why it is you
13 would be required to write that information down on the
14 form?

15 A. Because there was a place on the form to write it.

16 Q. Other than that, you don't know why?

17 A. No, sir.

18 Q. In the course of your investigations, did you do
19 anything to determine how any piece of property that you
20 were observing had been used historically?

21 A. No.

22 Q. All you could assess was how it was being used at
23 the time you were there; right?

24 A. Yes, sir.

25 Q. Okay. And in that respect, it was whatever

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1 observations you made over the course of a 10 or 15-minute
2 period for whatever stop; right?

3 A. Yes, sir.

4 Q. So you don't even know how the land at any
5 particular place was being used the morning before you were
6 there or the afternoon after you left; is that fair to say?

7 A. Yes, sir.

8 Q. Did you do anything to evaluate the history of
9 commercial fertilizer use at any property that you looked
10 at?

11 A. No, sir.

12 Q. Did you do anything to evaluate the history of
13 land application of poultry litter at any property that you
14 looked at?

15 A. No, sir.

16 Q. Did you do anything to evaluate the history of
17 land ownership for any property that you looked at?

18 A. No, sir.

19 Q. Did you do anything to verify who actually owned
20 at the time you were there any property you looked at,
21 other than observation of a sign?

22 A. I think that was it, the observation of the sign,
23 yes, sir.

24 Q. Did you do anything to evaluate the history of
25 cattle production on any of the property you looked at?

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1 A. No, sir.

2 Q. Did you do anything to assess the number and
3 locations of the cattle in the IRW as part of your
4 investigation?

5 A. No, sir.

6 Q. Did you do anything to assess the number or
7 location of any other type of livestock, such as horses or
8 swine in the course of your investigation?

9 A. No, sir.

10 Q. Did you do anything to catalog observations of
11 stream bank erosion at any location in the IRW?

12 A. No, sir.

13 Q. Did you see cattle when you were cruising around
14 through the IRW?

15 A. Yes, sir.

16 Q. Did you see them in a lot of places?

17 A. Yes, sir.

18 Q. But you weren't charged with recording where you
19 made those kind of observations, were you?

20 A. No, sir.

21 Q. Did your investigative work involve determining
22 where and the activity of any septic systems in the IRW?

23 A. No, sir.

24 Q. Did your investigation include any observation of
25 any wastewater treatment facilities in the IRW?

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1 A. No, sir.

2 Q. Considering all the investigatory work that you
3 did and your experience as an investigator, did you observe
4 the violation of any laws in the investigations that you
5 conducted?

6 MR. WILKERSON: Object to form.

7 A. Well, I'm not familiar with, one, Arkansas laws or
8 laws pertaining to the spreading of poultry waste. I'm
9 more familiar with -- with criminal laws here in Oklahoma.

10 Q. (BY MR. WALKER) And obviously, I can only ask you
11 about the extent of your knowledge of the law. But to the
12 extent of your knowledge of the law, did you observe any
13 violations of law in the course of your work?

14 MR. WILKERSON: Object to the form.

15 A. Well, again, I made a lot of observations and I'm
16 not sure if -- if -- if I was aware of the -- of things
17 that I observed or breaches of the law or not.

18 Q. (BY MR. WALKER) And again, I can only ask you
19 about what -- what your understanding is of the law,
20 realizing that there are limitations and you don't know
21 every law and neither do I. What I'm asking is, did you,
22 based on your experience, perceive any violations of the
23 law based on the activities that you saw?

24 MR. WILKERSON: Okay. Object to form.

25 A. Again, I -- I wasn't -- I wasn't cognizant of a --

1 a law that was being broken.

2 Q. (BY MR. WALKER) That's all I'm asking.

3 A. Okay.

4 Q. Did you report any of the observations that you
5 made to any state agency?

6 A. I can only assume that the worksheets that we
7 completed were reported to the Attorney General's office.

8 Q. And -- and that's not my question. I don't need
9 you to assume. I'm asking if you personally reported any
10 of the activities you saw to any state agency.

11 A. No.

12 Q. You reported all of your observations to
13 Mr. Steele; right?

14 A. Yes.

15 Q. And only Mr. Steele?

16 A. Yes. Whom I believe to be an agent for the State
17 of Oklahoma and the Attorney General's Office, I might add,
18 so --

19 Q. Did you ever call the Oklahoma Department of
20 Agriculture about any observations you saw?

21 A. No, sir.

22 Q. Did you ever contact the Oklahoma Department of
23 Environmental Quality about observations you saw?

24 A. No, sir.

25 Q. Did you ever contact any person affiliated with

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1 the State of Arkansas with any observations you saw?

2 A. No, sir.

3 Q. Did you ever contact anybody other than Mr. Steele
4 about the observations you saw?

5 A. No, sir.

6 Q. Do you ever go and recreate in the waters of the
7 IRW, fishing, tubing, anything like that?

8 A. Not recently.

9 Q. When's the last time?

10 A. It's probably been 15 years.

11 Q. Any -- any particular reason you -- you haven't
12 gone to the IRW waters for the last 15 years?

13 A. I haven't -- I don't have the equipment that I at
14 that time had.

15 Q. Just kind of busy and you do other things, is
16 that --

17 A. Yes.

18 Q. -- about what it is?

19 A. Yes.

20 (Exhibit No. 3 was marked.)

21 Q. Mr. Nance, the court reporter has marked as
22 Exhibit 3, which I'll represent to you is a compilation of
23 all the forms I could find with your name on it relating to
24 any Cargill facility, with -- with, I guess, the caveat
25 that there are couple of forms relating to Willowbrook, a

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1 particular Willowbrook Farm, which at the time of your
2 observations was -- was not owned by Cargill but that
3 Cargill has since wound up contracting with that grower.
4 Okay?

5 A. Yes, sir.

6 Q. And before we dive through the forms, I'd just
7 like to ask your recollection. Do you have any
8 recollection of seeing any land application activities on
9 any Cargill grower's farm?

10 A. I don't -- I don't know that I would have known
11 that there would have been an application on a specific
12 farm, because I don't know that I had specific information
13 about the ownership of the property.

14 Q. Do -- do you have any particular recollection as
15 you sit here today of any activity that occurred on a
16 Cargill facility or a Cargill-grower facility?

17 A. No, sir.

18 Q. If you could look at the first page of Exhibit 3,
19 please.

20 A. Yes, sir.

21 Q. Is this your handwriting?

22 A. Yes, it is.

23 Q. Do you recall visiting the Honeysuckle White Hill
24 Haven Farm that day?

25 A. I don't think I have a specific recollection of

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1 that.

2 Q. And that's really all I'm asking. I guess other
3 than what's documented on the form, do you have any
4 specific recollection of that farm?

5 A. No, sir.

6 Q. And -- so if you were to provide testimony about
7 that farm in the future, your testimony would have to be
8 limited to what's on the form; is that fair to say?

9 A. Yes, sir.

10 Q. And I think we could probably make this pretty
11 short. Would you look through the remainder of the forms
12 in Exhibit 3 and tell me if the testimony you just gave
13 about the first form would be the same, which is that you
14 have no specific recollection of visiting any of those
15 farms and that your testimony is necessarily therefore
16 limited to the information that appears on each form. And
17 take whatever time you need, please.

18 A. Okay, sir. What -- what's your question again,
19 please?

20 Q. My question is, I asked you whether you had any
21 specific recollection of the first form and you said no,
22 and whether you had -- whether therefore your testimony
23 about your visit to that farm would necessarily be limited
24 to the information on the first form; right?

25 A. Yes, sir.

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1 Q. And my question is, is if I asked you those same
2 questions about each subsequent form in Exhibit 3, would
3 you give me the same answer that you have no specific
4 recollection of being at any of those farms or locations?

5 A. Yes.

6 Q. And that your testimony is therefore necessarily
7 limited to the information that appears on the forms
8 themselves?

9 A. Yes, sir.

10 Q. And I'd like to ask you just a couple specific
11 questions. The third form in Exhibit 3 has a Bates number
12 in the lower right-hand corner, 674. Do you see that form?

13 A. Yes, sir.

14 Q. And on the right-hand side of that form you have a
15 few question marks that you wrote on the form; correct?

16 A. Yes, sir.

17 Q. And this is your handwriting, isn't it?

18 A. Yes, sir.

19 Q. Okay. And -- so you have no recollection of
20 whether there was any stacked used litter or cake or any
21 stacked new litter at that farm; right?

22 A. Yes, sir. The question mark was I wasn't able to
23 ascertain that.

24 Q. You didn't know then and you don't know now;
25 right?

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1 A. That's correct.

2 Q. And the same question for the next page, you've
3 got a -- did you write that form?

4 A. Yes, sir.

5 Q. Okay. And you've got a question mark in that same
6 category of questions on the form. Do you see that?

7 A. Yes, sir.

8 Q. And you didn't know the answer to those questions
9 then and you don't know it now, do you?

10 A. That's correct.

11 Q. And then skipping a few pages to the form Bates
12 labeled 1892, you -- is that your writing?

13 A. Yes, sir, it is.

14 Q. Okay. And you have a question mark in the same
15 place on that form as well; correct?

16 A. Yes, sir.

17 Q. And you didn't know then how to answer those
18 questions and you don't know now; correct?

19 A. Correct, sir.

20 Q. You don't know if there was any litter on the
21 property, you couldn't make that observation now -- or then
22 and you don't know the answer to that now; right?

23 A. Correct.

24 MR. WALKER: I'd like to just take a short
25 break and go through my notes. I may be done and then

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1 there may be others who want to ask you questions. Okay?

2 THE WITNESS: Okay.

3 MR. WALKER: Thank you, sir.

4 THE VIDEOGRAPHER: We're off the record at
5 10:45 a.m.

6 (Break was taken from 10:45 a.m. to 10:54 a.m.)

7 THE VIDEOGRAPHER: This is the beginning of
8 Tape No. 3. It's 10:54 a.m.

9 MR. WALKER: I don't have any further
10 questions of you at this time. Thank you very much,
11 Mr. Nance.

12 THE WITNESS: Thank you.

13 MR. WALKER: I'll pass the witness.

14 EXAMINATION

15 BY MR. MIRKES:

16 Q. Hello, Mr. Nance. My name is Craig Mirkes. We
17 met earlier.

18 A. Yes, sir.

19 Q. I represent Peterson Farms. I've just got a few
20 questions, very few. Based on some of your educational
21 background and some of the classes you took, it sounds to
22 me like you have an interest in gardening. Is that a
23 correct assumption I made?

24 A. Yes, sir.

25 Q. Do you have a garden at home?

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1 A. Well, I was more into flower gardening. I at one
2 time considered upon my retirement from the police
3 department starting a nursery, a greenhouse nursery
4 business and so that's why I took a number of those
5 classes.

6 Q. Based upon that, it sounds like that you don't
7 have that same interest anymore. It's not as strong of an
8 interest; is that fair?

9 A. Yes, sir.

10 Q. Do you -- but you do grow flowers and stuff at
11 your house?

12 A. Yes, sir.

13 Q. Do you fertilize those flowers?

14 A. Yes, sir.

15 Q. What do you use to fertilize?

16 A. Generally Peters 20/20/20 fertilizer with a --
17 with a calibrated fertilizer -- I mean, a waterer.

18 Q. It's a spray-type fertilizer?

19 A. Yes, sir.

20 Q. Do you ever use cow manure or horse manure in your
21 flower garden?

22 A. No.

23 Q. Do you ever use poultry litter?

24 A. No.

25 Q. You were asked a whole series of questions about

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1 whether or not you had sampled a whole variety of things in
2 the -- in the watershed. And I just -- some people can
3 take that word to mean different things. I just want to
4 make sure that for every one of those instances you never
5 actually collected a sample.

6 A. That's correct. I never collected a sample.

7 Q. Some people might play word games and say that
8 they never analyzed a sample. So I just wanted to clear
9 that.

10 There's an attorney in this case and his last
11 name is Nance. Are you related to that attorney?

12 A. If -- if I am, I'm -- I'm -- I'm unaware of him or
13 my relationship to him.

14 Q. He's not your brother-in-law?

15 A. No.

16 Q. While you were in the watershed, did you have any
17 instance to visit a Peterson contract grower farm that
18 you're aware of -- or not visit, maybe that's the wrong
19 word, to investigate or to -- to document?

20 A. I think -- I think, yes.

21 Q. As you sit here today, do you have any independent
22 recollection of those Peterson contract grower farms?

23 A. No, sir.

24 Q. Do you recall ever seeing any violations of law at
25 those various farms?

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MR. WILKERSON: Object to form.

A. No, sir.

MR. MIRKES: That's all the questions I have.
Thank you, sir.

THE WITNESS: Thank you.

EXAMINATION

BY MR. CHADICK:

Q. Mr. Nance, we met earlier. I represent George's, which is an integrator based in Springdale, Arkansas. In reviewing the forms and the documents that I received from the State, I couldn't find any form where you had inspected a George's growers farm. Do you have any recollection of inspecting a George's growers farm?

A. I recall seeing George's signs, but I have no independent recollection of a specific farm that I -- that I documented.

Q. If we were to find some forms, then I think you testified earlier you'd be pretty much restricted to what it says on the forms, as far as your recollection?

A. Yes, sir.

Q. Okay. When you -- I think you said you put 20/20/20 on your flowers, do you know what 20/20/20 is?

A. That's the N, P and K, the nitrogen, phosphorous and potassium content.

Q. And did you calibrate your -- when you were

1 putting that 20/20 on, did you calibrate it? Did you have
2 a certain amount of fertilizer that you thought you should
3 have put on or you read that you should have put on?

4 A. Yes, sir.

5 Q. Did you take a soil sample?

6 A. I have in the past, but not -- not every time.

7 Q. When you take that soil sample, I'm assuming you
8 take it to the extension agency.

9 A. Yes, sir.

10 Q. And then they'll give you the nutrients, the
11 nitrogen, phosphate that you need?

12 A. Yes, sir.

13 Q. And did you at that time when you do that, would
14 you calibrate your applicator accordingly?

15 A. Yes, sir.

16 MR. CHADICK: I believe that's all I have.
17 Thank you, sir.

18 (Exhibit No. 5 was marked.)

19 EXAMINATION

20 BY MR. FREEMAN:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. My name is Bruce Freeman and I'm with Conner
24 Winters here in town representing Simmons, which is one of
25 the defendants in the case. And I've already passed out to

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1 everyone a copy of my little document and the court
2 reporter has marked it as Exhibit 5 for you. And I will
3 tell you, just by way of convenience, that what we did is
4 we went through the forms and we found anything that talked
5 about Simmons --

6 A. Yes, sir.

7 Q. -- my client. We stapled them together, so -- so
8 that's what that is. And your name, I've been looking this
9 morning, does not actually appear on the first few pages.
10 So if you want, I can save you some of those. You know
11 those little numbers at the bottom right-hand corner, we
12 call them Bates numbers.

13 A. Bates numbers, yes, sir.

14 Q. The first one I see your name appearing on is
15 12706. That can help you fly past the ones you don't need
16 to look at.

17 A. Okay.

18 Q. Are you there, sir?

19 A. Yes, sir, I am.

20 Q. Okay. Let me ask you first, is there any
21 handwriting on this that's yours or is it is somebody
22 else's?

23 A. This is someone else's handwriting.

24 Q. Okay. Do you know from looking at the form whose
25 handwriting it is?

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1 A. No, sir.

2 Q. Okay. Your name appears once on there. See under
3 observers, it has Steele, Hummel, air and Hummel, Nance,
4 ground?

5 A. Yes, sir.

6 Q. Okay. And there's a date on it. It looks like
7 April 6th, 2007 has been scratched in there for the day.

8 A. Yes, sir.

9 Q. Does that help you at all in remembering any visit
10 or event that's noted here on the sheet? And feel free to
11 look at it as long as you need to.

12 A. No, I don't have a specific recollection of this.

13 Q. Doesn't bring it back?

14 A. Huh-uh.

15 Q. Let me ask you because of the air and the ground
16 thing. Here down in the notes, there's an indication
17 following spreader truck from air.

18 A. Yes, sir.

19 Q. Do you remember, sir, being in contact with an
20 airplane in real-time by telephone, radio or whatever?

21 A. No, I don't have a specific recollection of that.

22 Q. Do you remember being contacted by anyone from the
23 airplane to tell you where a spreader truck might be that
24 you-all would follow?

25 A. No.

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1 Q. So really we -- we have no idea what this is
2 talking about, as we sit here today?

3 A. I recall that -- that we used an airplane, Danny
4 Linchard is a pilot and he provided an airplane. And in
5 fact, some points in time I was a passenger in their plane,
6 but apparently this -- this indicates that I was -- I was
7 on the ground at this day and -- but I don't have a
8 specific recollection about this day and what was
9 occurring.

10 Q. I appreciate you're pointing out the airplane
11 point to me. How many times were you a passenger in the
12 plane?

13 A. You know, I can't recall, two or three times, but
14 maybe more.

15 Q. What were you doing while you were in the
16 airplane?

17 A. Again, it was equipped with a video camera and
18 a -- and a still camera and photographing situations where
19 spreaders were operating in a meadow or pasture.

20 Q. So were you not part of any aerial survey of where
21 houses were in the first place?

22 A. No.

23 Q. Okay. So yours was in looking for spreader
24 trucks?

25 A. Yes, sir.

1 Q. Okay. If you -- well, let me ask you, did you see
2 any spreader trucks?

3 A. Yes.

4 Q. And when you saw a spreader truck from the
5 airplane, what did you do?

6 A. Photographed it and I believe took a GPS location
7 where we were at, if I recall right. I think -- I think
8 basically my -- my responsibility was just photographing
9 what we were seeing.

10 Q. Did you call anybody from the airplane to let them
11 know where you were seeing a spreader truck?

12 A. I -- I didn't.

13 Q. Was it just you and the pilot?

14 A. No.

15 Q. Who -- who else was with you in the airplane?

16 A. I think different times, I believe -- I think Rod
17 Hummel may have -- may have been a passenger. Gary
18 Stansill may have been a passenger. I can't recall
19 specifically. It probably would have been -- been those
20 two or maybe Steve Steele.

21 Q. Okay. I guess I should ask you how many folks
22 does the airplane hold. I don't know if its a big airplane
23 or a little airplane.

24 A. I think it's a four-place airplane, a small
25 airplane.

1 Q. Where did you guys fly out of?

2 A. The airport there in Siloam Springs.

3 Q. I was gonna ask you something about the waypoints.

4 A lot of the forms give a waypoint and there's a number.

5 A. Yes, sir.

6 Q. All right. And I want to make sure I understand
7 how the GPS deal worked. When you were given the GPS unit,
8 would there be a number of waypoints already in it and you
9 were gonna go to it?

10 A. No. No.

11 Q. Okay.

12 A. When we -- when we would be at a location where we
13 would observe spreading occurring, we would -- we would
14 indicate in the -- in the device where that occurred and it
15 would indicate with a waypoint number that we would
16 transfer to the form itself and a -- and a corresponding
17 latitude and longitude of that. And I think I testified
18 earlier that I used the-- the same device to locate houses
19 by navigating to them from a latitude and longitude that
20 was on the printed aerial photograph. And but -- but --
21 but there was no waypoint assigned to it at that time. It
22 was only by when I would press the device and it would give
23 me a waypoint number.

24 Q. I appreciate you clearing that up because I didn't
25 really -- I didn't understand that. If you could turn to

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1 the next page for me, please, in the exhibit. Your name
2 also appeared on that one so you got the misfortune of
3 being asked about it. It's 12707.

4 A. Yes, sir.

5 Q. Is any of this your handwriting?

6 A. No, sir.

7 Q. Do you know whose it is?

8 A. No, sir, I do not.

9 Q. This is another one that talks about some people
10 being in the air and then you're listed as being on the
11 ground.

12 A. Yes, sir.

13 Q. Okay. Feel free and look at this and I'm curious,
14 does looking at this bring anything back to you?

15 A. No, sir.

16 Q. Okay. Kind of backing away from the airplane for
17 a minute and getting back on the ground. Did you observe
18 any spreading activities from the ground in a vehicle on
19 any of the days you were out?

20 A. Yes.

21 Q. Okay. And did you do anything to determine the
22 rate of application on the field where you were watching
23 litter being applied?

24 A. No, other than either photograph it or videotape
25 it.

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1 Q. Okay. Did you do any measuring of distances from
2 any site where you saw litter being applied to a field in
3 any kind of a water body?

4 A. No, sir.

5 Q. Let me ask you then, did you see litter being
6 applied near any water body?

7 A. Yes, sir.

8 Q. Okay. What kind of water body did you see?

9 A. A lot of -- of creeks and streams and rivers.
10 Also there was a -- again, a lot of the locations, the
11 names elude me, but there was a large reservoir over by
12 Prairie Grove, I think. And there was also another --
13 another large body of water up by Gentry, Arkansas that
14 anyway -- and I don't know the names of those locations.

15 Q. Would that be the sort of thing that you would put
16 in the notes if you were the writer that day?

17 A. I think we would just document our findings
18 with -- by the GPS and -- and -- and just expect that that
19 data would be incorporated into the where that was in
20 relation to the streams and the waterways. We just
21 documented the GPS location of that and -- and I guess just
22 allowed, again, that to -- to be incorporated into the
23 overall data that was being compiled. If that makes sense
24 to you.

25 Q. Yeah. As I understand it, you guys weren't

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1 measuring anything, but you'd take a picture or whatever to
2 tell where it was?

3 A. Yes, sir.

4 Q. Okay. Let me ask you. On this form that we're
5 looking at, the 12707 --

6 A. Yes, sir.

7 Q. -- there is a reference that says it looks like
8 field 35.80211 by 94.49799. What does that mean; do you
9 know?

10 A. That appears to be a latitude and longitude
11 designation, but I -- I -- I don't know that it's -- it's
12 close correspondence to the -- the Waypoint 36 and 35 with
13 latitude and longitude up there. But -- so again, I'm
14 making an assumption. It's a latitude and longitude
15 designation and it's very -- very close in proximity to the
16 -- to the one that's -- that's written in the latitude and
17 longitude box up here. But I -- I don't -- I don't know
18 that for a fact.

19 Q. Okay. Well, you know, if you don't know, that's
20 fine. I'm just asking.

21 So none of this handwriting is yours so I
22 won't -- I won't, you know, flog you too much more about it
23 since it's not your. Let's see if you're on another one
24 here. I see your name on the next one.

25 A. Yes, sir.

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1 Q. 12708. Again, it's got people listed as being in
2 the air and you're listed as being on the ground. Is any
3 of this handwriting yours?

4 A. No, sir.

5 Q. Okay. There's a reference to a truck being
6 followed by air from Simmons Denton Farm. Do you have any
7 recollection of doing that yourself?

8 A. No.

9 Q. Okay. And then you're not on the next page or the
10 next page or the next page. I think the last one that you
11 appear on in my little pile here is 12775.

12 A. Yes, sir. And that --

13 Q. Okay.

14 A. -- and that appears to be my handwriting.

15 Q. Okay. I was gonna ask. So it's got your name
16 there, you and Mr. Hummel. And is this one you filled out?

17 A. Yes, sir.

18 Q. Okay. Would this mean that you and Mr. Hummel
19 were in the truck together?

20 A. Yes.

21 Q. And it's got a date and it's got a time. So would
22 all the stuff in the notes be things that you wrote?

23 A. Yes.

24 Q. Okay. Let me ask you, sir, is the stuff in the
25 notes your input or would some of it be Mr. Hummel's input

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1 or can we tell?

2 A. It would -- what do you mean by input?

3 Q. Well, like -- you know, that's -- that's a good
4 question. Let me back up.

5 Would you sometimes write down observations
6 made by your teammate?

7 A. No. This would -- I think this would be mine.

8 Q. So it's all yours?

9 A. Yes, sir.

10 Q. Looking at what's described here, does this bring
11 back any specific memory of anything or we just have to
12 rely on what it says?

13 A. We have to rely on what this says.

14 Q. You can put that away, then, for the moment. And
15 let me see if I've got anything else to ask you about.

16 You had said that you served some subpoenas?

17 A. Yes, sir.

18 Q. Okay. Do you remember about how many you served?

19 A. No. Do you want a ballpark?

20 Q. Yeah. Ballpark's always fine with me.

21 A. 20.

22 Q. Were they all in Oklahoma?

23 A. No.

24 Q. Were some of them in Arkansas?

25 A. Yes.

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1 Q. Okay. Did you ever look to see if you needed to
2 have any kind of license or anything to serve subpoenas in
3 Arkansas?

4 A. No.

5 Q. Because I haven't. Okay. Who asked you to serve
6 the subpoenas?

7 A. Steve Steele.

8 Q. Okay. Did you-all have any team meetings as the
9 project went along? You've described how you'd pick up
10 stuff from Mr. Steele and turn it back and I didn't know if
11 you-all had gotten together from time to time to talk about
12 how it's going and what needed to be done and that kind of
13 thing?

14 A. Generally, we would meet in the mornings for
15 breakfast and that's when Steve Steele would -- would give
16 us the -- our, you know, equipment and the -- and the
17 worksheets to -- to go and basically discuss what -- that
18 we were -- that we were going to be looking for spreader
19 trucks or we were going to be documenting active houses or
20 things that. And -- and then he would -- he would give us
21 a little training on the equipment and that type of stuff
22 there at -- at that time.

23 Q. Would you-all get back together for lunch in the
24 middle of the day?

25 A. Well, occasionally. If -- if -- if we were in the

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1 proximity and occasionally we'd meet for lunch, but
2 probably most of the time not.

3 Q. Where would you guys assemble at the end of the
4 day to turn all of this stuff back in?

5 A. Well, again, it would vary. Seems like most of
6 the time there was a location off of Highway 412 by Locust
7 Grove and we would meet back up there.

8 Q. I think I have a visual on the area from weekends
9 wasted at a nearby Boy Scout Camp.

10 A. Okay.

11 Q. You had talked about going into Arkansas when you
12 were looking for active houses. Did you also do any of
13 that on the Oklahoma side?

14 A. Yes, sir.

15 Q. Okay. Had you worked with Mr. Steele before, not
16 in the police department, but on any kind of private
17 investigating work he was doing?

18 A. No, sir.

19 Q. How did you figure out what days you could do it?
20 Were you using days off or vacation days?

21 A. Yes, sir.

22 Q. Like a combination?

23 A. Well, he would -- Steve Steele would -- would call
24 and -- I guess, I don't know how it was determined what
25 days they needed things done, but -- but he would call and

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1 ask if -- if I would be available on a given day. And if
2 it was on my day off or if I had the opportunity to take a
3 vacation day, I would do that.

4 Q. We talked a little bit today -- you talked a
5 little bit earlier about your college training. Did you
6 have any discussions with Mr. Steele or any of other team
7 members about the training you had back in college in your
8 soil science class or whatever?

9 A. No, sir.

10 Q. Did anyone ever tell you why it was that folks
11 would be spreading poultry litter on fields?

12 A. I mean, we had conversations amongst our --
13 ourselves. I'm not sure if it specifically came up. I
14 think we believed that there were a number of reasons.
15 One, to -- to move the -- the litter from the -- from the
16 house -- or to get it out of the house and then to use it
17 for the fertilizer on -- on meadows and pastures.

18 Q. You had talked about having to drive around kind
19 of randomly look for spreading activity in that second
20 phase of the project. Did anybody give you-all a schedule
21 that when anybody was going to be spreading litter that
22 would help you?

23 A. No, sir.

24 Q. So you really were just driving around looking?

25 A. Yes, sir.

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1 Q. I don't mean to ask anything that's touchy, but
2 when you were in the -- in the field on this project, did
3 you go armed?

4 A. I don't think I did.

5 Q. Okay.

6 A. And I don't know about any other -- anybody else.

7 Q. Because I assume you probably are when you're at
8 work.

9 A. Yes, sir.

10 Q. I just didn't know if you were when you were out
11 on this protect.

12 A. I normally don't -- don't go armed when I'm off
13 duty, and -- so I don't -- I don't think I was armed during
14 that period of time.

15 MR. FREEMAN: You know what, I think that's
16 all of my scribbling I can find and I appreciate your time
17 and I'll pass you on to anybody else who might be left to
18 ask you questions.

19 THE WITNESS: Thank you.

20 EXAMINATION

21 BY MR. WILKERSON:

22 Q. I just have a few follow-up questions. We met
23 this morning. My name is Brian Wilkerson, Riggs Abney.

24 Earlier in your examination, you discussed
25 that sometimes the notes that you were taking, you would

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1 observe something in the field or at a site that you had
2 gone to and maybe have to drive down the road a mile or two
3 to write down your notes.

4 A. Yes, sir.

5 Q. What was the longest amount of time, if you
6 recall, from making an observation and then having to move
7 down the road a bit to write those notes down?

8 A. Oh, well, they -- they were pretty much
9 contemporaneous. In fact, you could probably tell by my
10 handwriting that it was while we'd be bumping down those --
11 those gravel roads. I'd be -- I'd be writing this and then
12 we would get down to a section line or something and stop
13 where I could -- I could complete my -- my notes or my
14 thoughts. But it -- it would be within -- you know, I
15 would have the whole thing completed within just a matter
16 of a few minutes, so it was fairly contemporaneous with
17 that.

18 Q. And in your observations in this case, at any time
19 when you're responsible for taking notes, were there any
20 times that you made an observation and then took notes or
21 filled out one of these logs the following day?

22 A. No.

23 Q. Okay. At any time after the same day as what you
24 were taking the notes or making the observations?

25 A. No.

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1 MR. WILKERSON: Okay. Nothing further.

2 MR. WALKER: Nothing further from me.

3 MR. WILKERSON: I'll just scream my
4 objections then. Does anybody else have anything further?

5 MR. FREEMAN: I don't.

6 MR. WILKERSON: I don't have any further
7 questions, either, Mr. Nance. You have an opportunity to
8 review the written transcript of your deposition and make
9 corrections if you feel they're necessary or you can waive
10 the opportunity of reading through your deposition and just
11 have it produced the way the court reporter has prepared
12 it. Which would be you like to do?

13 THE WITNESS: Okay. I feel comfortable with
14 my -- my -- I think I've asked my counsel to have any
15 problems with the --

16 MR. WILKERSON: No. That's fine.

17 THE WITNESS: No. I feel comfortable with my
18 responses and everything was made to the best of my
19 knowledge and as honestly as I could candidly, so I can
20 waive.

21 MR. WILKERSON: You'll waive?

22 THE WITNESS: I'll waive, yes.

23 MR. WILKERSON: Okay. We're done.

24 MR. FREEMAN: Thanks for coming.

25 THE WITNESS: Thank you.

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MR. MIRKES: Thank you very much.

THE VIDEOGRAPHER: We're off the record at

11:21 a.m.

(End of proceedings at 11:21 a.m.)

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1 STATE OF OKLAHOMA)

2 I, Lisa Smith, a Certified Shorthand Reporter in and
3 for the State of Oklahoma, do hereby certify that, pursuant
4 to the agreement hereinbefore set forth, there came before
5 me on the 9th day of April, A.D., 2009, at 8:37 a.m. , in
6 the offices of Rhodes, Hieronymus, Jones, Tucker & Gable,
7 PLLC, located at 100 West Fifth Street, Suite 400, in the
8 City of Tulsa, State of Oklahoma, the following named
9 person, to wit: MIKE NANCE, who was by me duly cautioned
10 and sworn to testify the truth, the whole truth and nothing
11 but the truth, of his knowledge touching and concerning the
12 matters in controversy in this cause; and that he was
13 thereupon carefully examined upon his oath, and his
14 examination was reduced to writing under my supervision;
15 that the deposition is a true record of the testimony given
16 by the witness; signature of the witness being waived
17 pursuant to agreement of the parties; and that the amount
18 of time used by each party at the deposition is as follows:

19 Mr. Walker - 01 hours, 58 minutes,

20 Mr. Mirkes - 00 hours, 03 minutes,

21 Mr. Chadick - 00 hours, 03 minutes,

22 Mr. Freeman - 00 hours, 19 minutes,

23 Mr. Wilkerson - 00 hours, 02 minutes.

24 I further certify that I am neither attorney or
25 counsel for, nor related to or employed by, any of the

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parties to the action in which this deposition is taken,
and further that I am not a relative or employee of any
attorney or counsel employed by the parties hereto, or
financially interested in the action.

I further certify that, before completion of the
deposition, the Deponent _____, and/or the
Plaintiff/Defendant _____, did _____ did not _____ request
to review the transcript.

In witness whereof, I have hereunto set my hand and
affixed my seal this 21st day of April, A.D., 2009.



Lisa Smith

LISA SMITH, OK CSR 01778
Expiration Date: 12/31/2009
Esquire Deposition Solutions
Firm Registration No. 286
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Dallas, Texas 75201
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